

REMARKS

Claims 1-51 and 61-89 are pending in the Application. Claims 1, 8-10, 19, 25-27, 35, 37, 40, 42, 45, 47, 49, 73, 82, and 83 are being amended. New claim 90 is being added. Support for the claim amendments and new claim can be found at least on page 10, line 26 through page 11, line 5 of the Specification as originally filed. No claims are being cancelled. Claims 1-51 and 61-90 will be pending in the application after entry of this Amendment. Applicant believes no new matter is being introduced by way of this Amendment.

Regarding objections to the drawings.

The drawings filed on July 13, 2001 stand objected. The Office, however, does not provide any reason for objecting the drawings. As such, Applicant believes that the drawings were objected to in error. Further, Applicant requested non-publication of the patent application. Applicant will provide replacement drawings following receipt of notice of allowability and in advance of issuance or any publication.

Regarding claim rejections under 35 U.S.C. § 112, second paragraph.

Claims 1, 19, 35, 40, 45 and 47 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses these rejections.

Applicant's now amended claim 19 recites in pertinent part:

adding to the candidate server list an extra candidate server,
independent of a server selection weight maintained for the added
candidate extra server

where the underlined text indicates elements added by way of amendment. *See e.g.*, Specification, page 10, line 26-page 11, line 5.

Applicant respectfully submits that the "adding...an extra candidate server," element is definite and that now amended claim 19 overcomes the rejection under 35 U.S.C. § 112, second paragraph.

Now amended claims 1, 35, 40, 45, and 47 recite similar elements as now amended claim 19, and, as such, overcome the rejection under 35 U.S.C. § 112, second paragraph for similar reasons.

Regarding claim rejections under 35 U.S.C. § 103(a).

Claims 1-7, 11-16, 18-24, 28-30, 32, 33, 35, 36 38, 39-41, 43-48, 50, 51, 62, 64, 66, 68, 7-, 72, 74-79, and 84-89 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0039585 by Primak *et al.*, hereinafter “Primak” in view of U.S. Patent No. 6,078,960 by Ballard. Applicant respectfully traverses these rejections.

Applicant’s now amended claim 19 recites in pertinent part:

adding to the candidate server list an extra candidate server,
independent of a server selection weight maintained for the added
extra candidate server

where the underlined text indicates elements added by way of amendment. *See e.g.*, Specification, page 10, line 26-page 11, line 5.

The Office proposes that Applicant’s claim 1 (and similarly claim 19) of “a content server that maintains a server selection weights” reads on Primak-Ballard’s description of a DNS server maintaining “capacity information.” Emphasis added. *See* Office Action, page 3. Given this construction, however, one can surmise that Primak-Ballard merely describes servers are selected based on capacity information and a new server is added to these servers depending on capacity information of the new server. Primak-Ballard does not teach adding the new server independent of its capacity information.

Primak-Ballard adds the new server to servers that are overloaded, causing a load to be rebalanced or reapportioned from the overloaded servers to the added server. *See* Ballard, column 6, line 49-column 7, line 9 (adding an additional server and altering load-balancing percentages). Whether the load is re-apportioned to a server depends on the available capacity of the server. For example, the load would not be reapportioned to a server that did not have sufficient capacity to handle the load. Doing so would overload the server. Adding another overloaded server to servers already overloaded would exacerbate, not solve, the problem of overloaded servers. In this way, one practicing the technique described by Primak-Ballard of load-balancing without overloading servers would not be motivated to add a server independent of capacity information of the server.

Accordingly, Applicant respectfully submits that the Primak and Ballard references, either separate or in combination, do not teach nor provide motivation for each and every element of Applicant’s now amended claim 19 (“adding to the candidate server list an extra

candidate server, independent of a server selection weight maintained for the added extra candidate server”). Applicant respectfully submits that now amended 19 overcomes the rejection under 35 U.S.C. § 103(a) and respectfully requests that the claim be allowed.

Now amended independent claims 1, 35, 40, 45, and 47 recite similar elements as now amended claim 19, and, as such, should be allowed for similar reasons as presented above.

Claims 2-7, 11-16, 18, 20-24, 28-30, 32, 33, 36, 38, 39, 41, 43-44, 46, 48, 50, 51, 62, 64, 66, 68, 70, 72, 74-79, and 84-89 should be allowed at least for the same reasons as the independent claims from which they depend.

Claims 17, 34 and 80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak, in view of U.S. Patent No. 6,078,960 by Ballard in further view of Meek *et al.* (U.S. Patent No. 6,539,426) (hereinafter “Meek”). Applicant respectfully traverses these rejections.

Because claims 17, 34, and 80 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits these claims should be allowed for at least the same reasons.

Claims 8-10, 25-27, 37, 42, 49, 73 and 81-83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of U.S. Patent No. 6,078,960 by Ballard in further view of Guenthner *et al.* (U.S. Patent No. 6,134,588) (hereinafter “Guenthner”). Applicant respectfully traverses these rejections.

Because claims 8-10, 25-27, 37, 42, 49, 73, and 81-83 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits these dependent claims should be allowed for at least the same reasons.

Claims 61, 63, 65, 67, 69 and 71 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Primak in view of U.S. Patent No. 6,078,960 by Ballard in further view of Lin (U.S. Patent No. 6,298,451). Applicant respectfully traverses these rejections.

Because claims 61, 63, 65, 67, 69, and 71 depend from the independent claims, the above remarks apply. Therefore, because these claims depend from the independent claims, which should be allowed under 35 U.S.C. § 103(a) for reasons presented above, Applicant respectfully submits these should be allowed for at least the same reasons as the base claims from which they depend.

Regarding new claim 90.

Applicant's new claim 90 recites in pertinent part:

adding the extra candidate server without altering the weights of the candidate servers.

Emphasis added.

In contrast, the proposed Primak-Ballard combination alters load-balancing percentages of servers to re-balance a load among the servers when a new server is added. Primak-Ballard describes a client-side load-balancing technique in which a client, not a server, balances or apportions a load over several servers using a load-balancing list of servers. *See* Ballard, column 5, line 57-column 6, line 2. The load-balancing list includes load-balancing percentages. *See* Ballard, column 6, lines 29-48; and *see also* FIGS. 4A-B. The load-balancing percentages are seeds that direct the client to select servers, such that “[o]ver time, the client [] selects each one of the servers in the load balance list by a given load percentage for the respective server,” and “the actual load percentage for each server [] in the list [] converges to the specified percentage in the list.” *See* Ballard, column 1, lines and 59-67; and column 6, lines 29-48. In this way, the load-balancing percentages instruct the client how to balance the load, and a change to the percentages instructs the client to change how it balances the load.

For example, a system administrator adds an additional server to the load-balancing list to meet an increase in load. *See* Ballard, column 6, line 61-column 7, line 9; and FIG. 4A (load-balancing list). The system administrator alters the load-balancing percentages of the servers and provides them to the client in an updated load-balancing list. *See* Ballard column 6, line 61-column 7, line 9; and FIG. 4B (updated load-balancing list). Because there is a change in the load-balancing percentages, the client now knows to reapportion some of the load to the additional server to balance the increased load. Without altering the percentages, the client

would not know to use the additional server, and would continue to use and overload the other servers.

As such, according the teachings of Primak-Ballard, load balancing of client demand cannot be achieved without altering load-balancing percentages of servers when an additional server is added. This is not the same as Applicant's claim 90 of "adding the extra candidate server without altering the weights of the candidate servers." Accordingly, Applicant respectfully submits that then Primak and Ballard references, either separately or in combination, do not teach each and every element of Applicant's new amended claim 90, and the claim should be allowed.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims that will be pending after entry of this Amendment (claims 1-51 and 61-90) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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